



DOCKET FILE COPY ORIGINAL

**NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION**

April 24, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MCI Petition for Declaratory Ruling, CC Docket No. 96-45

Dear Ms. Salas:

Pursuant to the Public Notice released April 10, 1998, the Public Staff - North Carolina Utilities Commission (Public Staff) submits an original and five copies of its comments in the referenced matter.

An electronic copy of the Public Staff's comments is also being submitted via the Internet.

Sincerely,

Antoinette R. Wike
Chief Counsel

cc: Sheryl Todd
Accounting Policy Division
Common Carrier Bureau

045

Executive Director 733-2435	Communications 733-2810	Economic Research 733-2902	Legal 733-6110	Transportation 733-7766
Accounting 733-4279	Consumer Services 733-9277	Electric 733-2267	Natural Gas 733-4326	Water 733-5610

P.O. Box 29520 • Raleigh, North Carolina 27626-0520 • Fax (919) 733-9565

An Equal Opportunity / Affirmative Action Employer



Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

MCI Petition for Declaratory Ruling)
That Carriers May Assess Interstate)
Customers an Interstate Universal)
Service Charge Which is Based)
on Total Revenues)

CC DOCKET NO. 96-45

COMMENTS OF THE
PUBLIC STAFF - NORTH CAROLINA UTILITIES COMMISSION

Robert P. Gruber
Executive Director

Antoinette R. Wike
Chief Counsel

Public Staff - North Carolina Utilities Commission
Post Office Box 29520
Raleigh, North Carolina 27626-0520

(919) 733-6110

Dated: April 24, 1998

TABLE OF CONTENTS

Table of Contents	1
Introduction	2
Summary	2
Comments	2
Different Bases For Assessing Contributions	3
Intrastate Rates Are Under State Jurisdiction	3
MCI Is Imposing Charges On Intrastate Services	4
Conclusion	5

INTRODUCTION

The Public Staff - North Carolina Utilities Commission, by and through its Executive Director, Robert P. Gruber, submits these Comments on the Petition for a Declaratory Ruling filed by MCI Telecommunications Corporation (MCI) in this docket on April 3, 1998.

The Public Staff is an independent agency charged by N.C.G.S. 62-15 with representing the using and consuming public before the North Carolina Utilities Commission (NCUC) in matters affecting the rates and services of public utilities. As part of its responsibilities, the Public Staff investigates complaints addressed by consumers to the NCUC. In this capacity, the Public Staff becomes directly involved in complaints concerning charges included on bills rendered by interexchange carriers (IXCs) to North Carolina consumers. The Public Staff reviews these complaints and assists consumers in determining the validity of the IXC charges.

SUMMARY

The essence of MCI's request is not that the Commission remove an uncertainty regarding how carriers may recover the cost of federal universal service under the Universal Service Order¹ but that the Commission modify the Order to permit MCI's method of recovering its contributions, a method which has been challenged by certain state commissions. There is no ambiguity in the Universal Service Order regarding the manner in which IXCs (including MCI) may recover their contributions to the interstate universal service funds. The Commission should reaffirm its conclusions in the Universal Service Order that charges to recover carrier contributions to the interstate fund to support schools, libraries, and rural health care providers as well as contributions to the interstate fund for high cost and low income support are to be imposed only on interstate services. The FCC should also state unequivocally that MCI's method of recovering its contributions to the interstate universal service funds fails to comply with the Universal Service Order.

COMMENTS

MCI requests the Commission to find that carriers may recover federal universal service contributions through a charge on bills of interstate customers based on the customers' total revenues. MCI asserts that an expedited ruling is necessary to remove uncertainty about the manner in which carriers can recover such costs. The Petition was filed in response to action taken by the Staff of the Virginia State Corporation Commission and anticipated action by the Florida Public Service Commission's Division of Communications.

¹ Report and Order, CC Docket No. 96-45, FCC 97-157, 12 FCC Rcd 8776 (rel. May 8, 1997) (Universal Service Order).

Different Bases for Assessing Contributions. The Universal Service Order establishes two different bases for assessing carrier contributions to support the interstate universal service funds. For interstate high cost and low income support mechanisms, the FCC specifically stated that support will be based solely on interstate revenues.² Contributions to support mechanisms for schools, libraries, and rural health providers are to be based on both interstate and intrastate revenues.³ Carriers that provide interstate services must include all revenues from interstate and international services in both contribution bases.⁴ Notwithstanding the different assessment bases, the Universal Service Order specifically permits recovery of contributions to support schools, libraries, and rural health providers solely through rates for interstate services.⁵

Intrastate Rates Are Under State Jurisdiction. Rates for intrastate service are and have been within the province of state regulation.⁶ The Commission recognized the states' jurisdiction when it concluded in the Universal Service Order that

section 2(b) would not be implicated even if the Commission were to refer carriers to the states to obtain authorization to recover their intrastate contributions via intrastate rates, which it is not doing, because the Commission would still be referring the matter to the states' authority over changes in intrastate rates and the Commission itself would not be regulating those rates.⁷

Instead, the Commission said:

We have determined to continue our historical approach to recovery of universal service support mechanisms, that is, to permit carriers to recover contributions to universal service support mechanisms through rates for interstate services only. In discussing recovery we are referring to the process by which carriers' recoup the amount of their contributions to universal service.⁸

² Universal Service Order at para. 831.

³ Id. at para. 840.

⁴ Id. at paras. 836 and 841.

⁵ Id. at para. 838.

⁶ See 47 C.F.R. 152(b).

⁷ Universal Service Order at para. 822.

⁸ Id. at para. 825.

The Commission discusses the manner in which the contributions to the interstate universal service fund are to be recovered in paragraph 828 of the Universal Service Order, which reads in part as follows:

By providing for recovery of contributions to support universal service in rural, insular, and high cost areas and for low-income consumers ***solely from rates for interstate services***, we also avoid any of the asserted difficulties raised by commenters such as NYNEX that oppose assessing contributions from interstate and intrastate revenues because some carriers may face difficulty recovering contributions based on intrastate revenues. Similarly, to the extent that some commenters were concerned that section 2(b) prevents us from providing for recovery via rates for intrastate services, there are no such problems -- perceived or otherwise -- with our decision to provide for recovery solely through rates for interstate services.

(Emphasis added; footnote omitted.)

The Public Staff has reviewed the pertinent pages of MCI's FCC tariff regarding the method of recovering its interstate universal service contribution.⁹ This section indicates that, depending on the customer's service, charges will be imposed on either a per line or a usage basis, or both. Nowhere in the tariff does there appear to be any language indicating that "usage" includes intrastate usage. The Public Staff believes that a reference to usage in an interstate tariff can refer only to interstate usage, since federal tariffs govern only govern charges for interstate services.

MCI Is Imposing Charges On Intrastate Services. According to the Petition, MCI is recovering its contribution to the interstate universal service funds through a charge that is based on its customers' total interstate, intrastate, and international revenues. In other words, MCI equates the inclusion of intrastate revenues in the assessment base for contributions to the interstate universal service funding mechanism with the inclusion of customers' intrastate usage in the method of recovery. The Universal Service Order is unambiguously clear that this is not the Commission's intent. The revenues to which the Order refers are interstate, not customer, revenues. Revenues, of course, are derived from usage. Thus, under MCI's tariff, even if a customer has no interstate or international usage, a charge for supporting the interstate universal service funds will still be imposed because of the customer's intrastate usage. The Public Staff can only construe MCI's recovery method to be in violation of the Order.¹⁰

⁹ MCI Tariff F.C.C. No. 1, Section C-1.061.

¹⁰ The Public Staff does not address in these comments whether the recovery method complies with the Order's requirement that carriers "not shift more than an equitable share of their contributions to any customer or group of customers." Para. 829.

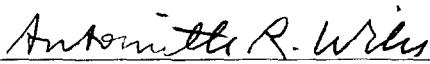
The Public Staff notes that, in North Carolina, MCI taken none of the steps necessary to implement an additional charge on intrastate services to recover its contributions to the interstate universal service funds. Consequently, although no enforcement action has yet been initiated, the Public Staff believes that MCI is subject to sanctions under the NCUC's rules for charging intrastate customers in excess of tariffed rates.

CONCLUSION

Based on the foregoing, the Public Staff requests that MCI's Petition be denied.

Respectfully submitted,

Robert P. Gruber
Executive Director


Antoinette R. Wike
Chief Counsel

Public Staff - North Carolina Utilities Commission
Post Office Box 29520
Raleigh, North Carolina 27626-0520

Telephone: (919) 733-6110
Facsimile: (919) 733-9565

Dated: April 24, 1998